Representation

23. During the course of the hearing, it was disclosed that the head office of the bank had adopted a policy whereby all officers of the bank should not be members of a rank and file union.

24. This policy, at one time applied, *inter alia*, to officers of the rank of staff officer but, upon representations made by the union, the policy was amended to exclude staff officer and is now applicable to all officers of the rank of regional officer and above.

25. It was made apparent that, all considerations apart, so long as Mr. Yeoh remained a member of the union he could not, by reason of the policy of the bank, aspire to become a regional officer unless he first resigns from the union in the same way as other employees, before promotion to the rank of regional officer, had resigned from the union.

26. Mr. Yeoh, in his evidence, contended that there was no conflict of interests in respect of a regional officer holding office in the union. He conceded, however, that a line must be drawn somewhere (that is to say, a line between management and members of a union) and that the line could be set by negotiation, contending that international practice should be followed. In the present situaion, a regional officer could be called upon to be an officer-in-charge of a branch and he thought it was in order for such an officer in charge of a branch to be a member of the union and if he saw fit to come out on strike should the union call a strike. He stated that he himself would come out on strike and where there was a clash of loyalties, his loyalty would be with the union.

27. It is, of course, the undoubted right of workers to establish and join unions or associations of their own choice, but questions arise firstly as to whether or not there should be some prohibition against persons who aspire to be appointed or promoted to managerial positions being or continuing to be officers or members of any particular union and secondly should that question be answered in the affirmative, what positions would be considered to be managerial positions in each particular instance.

28. The tribunal were not called upon to answer those questions. The tribunal, however, note that negotiations are at present in progress in relation to the extent of the union's representation of the staff of the bank and express the hope that the points referred to and raised under this section of this award will be included amongst the matters discussed during those negotiations.

BATA SHOE CO. LTD. v. SINGAPORE MANUAL & MERCANTILE WORKERS' UNION

[I.A.C. (Tan Boon Chiang, President; K. Gould, Employer Panel Member; and Niranjan Singh Employee Panel Member) March 1, 1966]

[Singapore — Industrial Arbitration Court Case No. 151 of 1964]

Industrial relations — Recognition of trade union — Managerial staff — Representation of — Meaning of "trade dispute" and "industrial matter" under the Industrial Relations Ordinance, 1960 — Jurisdiction of the court to hear recognition dispute.

This dispute was directed to the court for arbitration under the provision of section 30(b) of the Industrial Relations Ordinance, 1960 and concerned the union's claim to represent the shop managers of the company. At the commencement of the hearing, the company raised a preliminary objection that the court has no jurisdiction to hear and determine this dispute on the grounds that (1) recognition of the union is not a trade dispute within the meaning of the Ordinance and (2) the definition of industrial matter under the Ordinance would rule out any possibility of a claim for recognition of the union as each of the shop managers has entered into an individual written contract with the company.

Held: (1) the claim of the union to represent the shop managers of the company is a trade dispute within the meaning of the Ordinance and as such the court has jurisdiction to hear and determine this dispute;

(2) in view of this finding, both parties should negotiate on whether the union should represent the shop managers of the company and if no settlement is reached, the matter shall be referred back to the court for determination.

Cases and book referred to:—

(1) *Sir Edward Betham Beetham & Anor.* v. *Trinidad Cement Ltd.* [1960] 2 W.L.R. 77.

(2) *Rex* v. *National Arbitration Tribunal, Ex parte Bolton Corporation* [1941] 2 K.B. 405; [1941] 2 All E.R. 800.

(3) *Citrine* on "Trade Union Law" at page 504.

INDUSTRIAL ARBITRATION DISPUTE heard on November 26, and December 2, 1964.

J. J. Rattray (Secretary of the Singapore Employers' Federation) for the company.

R. A. White (of the National Trade Union Congress Research Unit) for the union.

RULING

This dispute came to us by way of a direction from the Minister for Labour under the provisions of section 28(b) of the Industrial Relations Ordinance, 1960 and concerns the recognition of the Singapore Manual and Mercantile Workers' Union (hereinafter referred to as the union) as representing the shop managers of the Bata Shoe Company, Limited (hereinafter referred to as the company.

2. At the commencement of the proceedings, the company asked leave of the court to lodge a preliminary objection concerning the jurisdiction

of the court to hear the present case on the ground that the issue in question is not a "trade dispute" as defined in section 2 of the Industrial Relations Ordinance, 1960. The company's application was opposed by the union which contended that the court should proceed straightaway to hear the dispute and could at the conclusion of the case make a ruling as to whether there is any substance in the company's objection.

3. After having fully considered the submissions by both parties, the court ruled that since the objection of the company, if sustained, would affect the power of the court to hear and determine this dispute, it would be proper for the court to hear the company and the union on the objection raised and rule upon it.

4. The company was of the view that the dispute before the court is not a "trade dispute" and that the court should therefore reject the union's claim. The court's attention was drawn to the definition of "trade dispute" as laid down in section 2 of the Industrial Relations Ordinance, 1960 (hereinafter referred to as the Ordinance) which reads as follows:—

> " 'trade dispute' means a dispute (including a threatened, impending or probable dispute) as to industrial matters;".

5. The company further argued that from this definition a "trade dispute" could only exist in terms of the definition where it is related to "industrial matters" which have been defined by the Ordinance as follows:—

> " 'industrial matters' means matters pertaining to the relations of employers and employees which are connected with the employment or non-employment or the terms of employment or the conditions of work of any person but shall not include any individual agreement or contract of service between employer and employee relating to the employment or terms of employment of such employee."

6. It is obvious that, if the issue referred to the court does not relate to an "industrial matter" as defined above, there could be no trade dispute and the court would have no power to deal with the matter.

7. The company took the stand that the question of its recognising the union as representing the shop managers, was not an "industrial matter" for two reasons, one of which was general in application while the other was related specifically to the dispute now before the court although, of course, it could well arise in other cases.

8. Firstly, it was maintained that a claim for the recognition of a union was not one which was connected with "the employment or non-employment or the terms of employment or the the conditions of work of any person". Such a claim could not in itself involve employment or non-employment, terms of employment or conditions of work. In short a claim for recognition was or could be a preliminary to claims on industrial matters being presented, but it could not by itself be an industrial matter and the dispute on it could not therefore be a "trade dispute".

9. Secondly, the wording of the second part of the definition of "industrial matters" which reads "but shall not include any individual agreement or contract of service between employer and employee relating to the employment or terms of employment of such employee" would rule out any possibility of a claim for recognition of the union (as representing the shop managers) being regarded as an industrial matter, the reason being that each of these shop managers had entered into an individual written contract of service (a contract largely identical in terms in each case) with the company.

10. The company drew the court's attention to clauses 5, 9, 10 and 17 of the company's standard form of contract of service from which it was submitted that it was clear beyond any doubt that the shop managers did exercise very considerable powers and responsibilities and were in fact the sole representatives of the company in the shops. Furthermore, these shop managers had the power to employ their own sales staff and generally exercised control over them in the carrying out of the business of the shops.

11. The union, on the other hand, maintained that since the Minister for Labour had referred this dispute to the Industrial Arbitration Court under section 28(b) of the Ordinance, this in itself was *prima facie* evidence that a trade dispute did exist between the parties, and the court therefore had jurisdiction to deal with the matter.

12. According to the union, the definition of "industrial matters" left no room for doubt that the present dispute between the parties came within its ambit as it concerned the relationship between the company and the shop managers. Not only did this dispute arise from the relationship of the employer and employee but it was also connected with the employment of the shop managers, as well as the terms and conditions of their work. In view of this, the union submitted that the court had jurisdiction to determine this dispute and should proceed forthwith to inquire into the merits of the case.

13. After careful consideration, we are of the view that the court has jurisdiction to hear and determine this dispute over the union's claim for recognition as representing the shop managers. The claim for recognition of the union raises the fundamental question of the freedom of an employee to belong to a trade union of his choice. It seems to us that the question of recognition of the union is only a

necessary preliminary step towards the service of claims on and future negotiations with an employer for a possible future collective agreement. That being so the question of union representation is directly connected with the terms of employment or the conditions of work of the employees concerned vis-a-vis the employer. It does not matter that the dispute is only between the company and the union over the question of recognition but the question that the court must ask itself is whether such dispute has connection with the terms and conditions of service of the employees — and the answer is in the affirmative.

14. Mr. Citrine in his well-known book on "Trade Union Law" at page 504 says:

> " 'Recognition' disputes between an employer and a trade union, and 'demarcation' disputes between two or more trade unions will normally be trade disputes. A trade union's principal function is to negotiate terms of employment, and a dispute as to whether it shall be allowed to do so is clearly connected with such terms or with the employment of the workmen concerned. Indeed, the recognition of a trade union for defined purposes may itself become a legally binding term of the contract of employment of the workmen affected."

15. The above opinion of the learned author has found expression in *Sir Edward Betham Beetham and another* v. *Trinidad Cement Limited,*[1] a Privy Council decision. In this case the Judicial Committee of the Privy Council held that a refusal by a company to recognise the claim of a trade union to represent the employees of the company although no dispute existed between the company and the employees and although the company had set up its own machinery to deal with the grievances of its employees constituted a trade dispute.

16. Lord Denning in the course of his judgment at page 83 said:

> "By definition a trade dispute exists wherever a 'difference' exists; and a difference can exist long before the parties become locked in combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening. And it seems to their Lordships that the parties had reached that point here, even in regard to the claim for bargaining status. The union had applied for bargaining status. The company had ignored the request just as it had ignored previous requests. The union had sought the mediation of the Commissioner for Labour: but, when he came forward, the company rejected his approach out of hand, just as it had rejected his previous approach. 'We have no intention of becoming involved in any way with the union concerned.' When this statement is taken in its setting — with the background of repeated refusal by the company to recognise the union over the two dismissals — the position at April 16, 1956, can be put simply thus: 'Here is this union knocking at the door of the company asking to be let in to negotiate: and the company time and time again refusing to open it, nay more, keeping it locked and barred against the union.' That was clearly a difference between them which subsisted at that very time. But then it was said that this was not a difference between the company and the workmen, as the Ordinance requires, but only a difference between the company and the union: and attention was drawn to the statement by Bennett J. that a dispute between such bodies is not a trade dispute: (see *Rex* v. *National Arbitration Tribunal, Ex parte Bolton Corporation.*[2]) To this their Lordships think that Lord Wright gave a sufficient answer when that case reached the House of Lords. He said: 'It would be strangely out of date to hold, as was argued, that a trade union cannot act on behalf of its members in a trade dispute, or that a difference between a trade union acting for its members and their employer cannot be a trade dispute'."

17. In view of the authorities cited, the company's first contention that the recognition of the union as representing the shop managers of the company is not a "trade dispute" within the meaning of the Ordinance cannot, in our view, be sustained.

18. With reference to the company's second contention, we are of the opinion having regard to the definition of 'Industrial matters' in section 2 of the Ordinance as it then was before the amendment to it took effect on 18th February, 1966, that it was not open to dispute that all individual contracts of service providing for specific matters relating to the employment or non-employment and the terms and conditions of employment of an employee are unenforceable in our court. The dispute before us however does not involve the enforcement of the individual contracts of service entered into between the company and the shop managers but rather the question of recognition of the union as representing the shop managers. In view of this we have also come to the conclusion that the company's second contention has no substance. In any case the Industrial Relations (Amendment) Act, 1965 amending the definition of 'Industrial Matters' by deleting the amendment made to the definition in 1962 has now conferred the necessary jurisdiction upon the court.

19. For the reasons that we have outlined above, we therefore rule that the question of the recognition of the union as representing the shop managers of the company is a "trade dispute" within the meaning of the Industrial Relations Ordinance, 1960.

20. In view of this ruling, we now order the parties to negotiate with each other on whether the union should represent the shop managers of the company. The parties may if they so wish call upon the services of the Registrar of the court and shall inform us in due course whether this issue of representation is to be finally determined by the court.

Order accordingly.